

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 111727-001

v

Blue Cross Blue Shield of Michigan
Respondent

/

**Issued and entered
this 8th day of December 2010
by Ken Ross
Commissioner**

ORDER

**I
PROCEDURAL BACKGROUND**

On May 7, 2010, XXXXX (Petitioner) filed a request for external review with the Commissioner of Financial and Insurance Regulation under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* The Commissioner reviewed the request and accepted it on May 14, 2010.

The Commissioner notified Blue Cross Blue Shield of Michigan (BCBSM) of the external review and requested the information used in making its adverse determination. The Commissioner received BCBSM's response on May 25, 2010.

The Petitioner's drug benefits are contained in the BCBSM *Preferred Rx Program Certificate* (the certificate). Because medical issues were involved, the Commissioner assigned the case to an independent review organization which provided its analysis and recommendations to the Commissioner on May 28, 2010.

II FACTUAL BACKGROUND

The Petitioner suffers from gastritis and gastroesophageal reflux disease (GERD). She has been taking the prescription drug Nexium for her condition. Nexium is not a preferred drug in BCBSM's formulary.

BCBSM denied authorization for the Nexium because the Petitioner had not established that she had tried and failed the formulary alternatives.

The Petitioner appealed BCBSM's decision. BCBSM held a managerial-level conference on April 7, 2010, and issued a final adverse determination dated April 22, 2010.

III ISSUE

Did BCBSM correctly deny authorization for the Petitioner's prescription for Nexium?

IV ANALYSIS

Petitioner's Argument

The Petitioner's physician indicates that Petitioner has been taking Nexium since 2002, that she has tried Prilosec, Prepidol, Gaviseon, Aciphex, and Reglan in the past, and that she is currently taking Protonix with no successful results.

The Petitioner argues that Nexium is the only drug that successfully treats her condition and she wants BCBSM to authorize it.

BCBSM's Argument

In its April 22, 2010, final adverse determination BCBSM said:

We reviewed the information provided from your physician; however, no additional documentation was submitted to explain why you have not tried and failed the formulary alternatives, generic Prevacid and generic Protonix. Both medications have equal efficacy to Nexium. We received no clinical information why the formulary drugs are not appropriate. Therefore, approval cannot be granted. If you choose to purchase Nexium, it will not be covered.

BCBSM based its denial on Section 2 of the certificate (p. 2.2):

Covered Drugs Obtained from a Panel Pharmacy

Co-Branded Formulary Drugs

When a panel pharmacy fills a prescription for a co-branded drug, we will pay the pharmacy the approved amount for the preferred co-branded drug after deduction of your copayment.

However, if the prescription is filled with a non-preferred co-branded drug, you will be responsible for the full cost of the drug unless the prescribing physician requests and obtains authorization for the non-preferred drug from BCBSM's Pharmacy Services department. [Underlining added]

BCBSM states that it appropriately denied authorization for Nexium because the conditions set forth in the Petitioner's certificate to cover the drug have not been complied with. Nexium is not on the preferred drug list and under the certificate reimbursement for a non-preferred drug will be made only if the prescribing physician requests and obtains authorization. As a condition for obtaining pre-authorization, the physician must demonstrate that the preferred drugs were tried and failed or that there are contraindications to the use of the preferred drugs.

The preferred drugs for the Petitioner's condition are Prilosec, Protonix, and Prevacid. BCBSM says the prescribing physician provided written documentation that Prilosec and Protonix were tried and were not effective. However, there was no documentation to show that Prevacid had been tried. Thus BCBSM says that the Petitioner failed to establish that she has satisfied the conditions for coverage of Nexium.

BCBSM maintains that its denial of reimbursement for the Petitioner's Nexium prescription was appropriate.

Commissioner's Review

The question of whether the Petitioner's Nexium prescription was medically necessary for her condition was presented to an independent review organization (IRO) for analysis as required by section 11(6) of the Patient's Right to Independent Review Act. The IRO physician reviewer is board certified in internal medicine and has been in active practice for more than fifteen years.

The IRO physician reviewer concluded that Nexium is not medically necessary for

treatment of Petitioner's condition. The IRO report includes the following comments and conclusions:

The [Petitioner] has been maintained on proton pump inhibitor therapy with Nexium since 2002. At issue in this appeal is whether Nexium is medically necessary for treatment of the member's condition.

The MAXIMUS physician consultant noted that proton pump inhibitors are indicated for the treatment of gastroesophageal reflux disease, gastric and duodenal ulcer disease, eradication of *Helicobacter pylori* infection, prevention and treatment of non-steroidal anti-inflammatory associated damage, management of hypersecretory states such as Zollinger-Ellison syndrome and treatment of non-variceal upper gastrointestinal bleeding and non-ulcer dyspepsia. The MAXIMUS physician consultant explained that the clinical efficacy and safety of all proton pump inhibitors are essentially similar. The MAXIMUS physician consultant also explained that the minor pharmacokinetic differences between proton pump inhibitors are not clinically meaningful. The MAXIMUS physician consultant noted that there is no documentation indicating that the [Petitioner] has tried and failed formulary proton pump inhibitor therapy with Prevacid. The MAXIMUS physician consultant indicated that the member should undergo a trial of Prevacid prior to consideration for coverage of Nexium.

Pursuant to the information set forth above and available documentation, the MAXIMUS physician consultant determined that Nexium is not medically necessary for treatment of the [Petitioner's] condition.

While the Commissioner is not required in all instances to accept the IRO's recommendation, it is afforded deference. In a decision to uphold or reverse an adverse determination, the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent review organization's recommendation." MCL 550.1911(16)(b). The IRO reviewer's analysis is based on extensive expertise and professional judgment and the Commissioner can discern no reason why that judgment should be rejected in the present case.

The certificate language is clear that the patient must have authorization for non-preferred drugs before coverage will be provided. Since there is no documented indication that the Petitioner had authorization or that she has tried Prevacid, one of the formulary drugs, BCBSM says it is not required to approve the nonformulary drug, Nexium. The IRO reviewer agreed.

Therefore, the Commissioner accepts the conclusion of the IRO and finds that the Petitioner's Nexium is not medically necessary for treatment of her condition at this time.

**V
ORDER**

BCBSM's final adverse determination of April 22, 2010, is upheld. BCBSM is not required to cover the Petitioner's prescription for Nexium.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.